

CORPORATION, SECURITIES AND LAND DEVELOPMENT BUREAU

RELEASE NO. 97-2-S

TO: ALL INTERESTED PARTIES

SUBJECT: Rule 506 and the National Securities Markets Improvement Act of 1996

General Background:

Questions have been raised concerning the impact of the National Securities Markets Improvement Act of 1996 ("NSMIA") that was signed into law on October 11, 1996. This Release will be limited to the impact of Section 18(b)(4)(D) of NSMIA upon Rule 506 of Regulation D of the Securities Act of 1933 (the "33 Act").

Section 18(b)(4)(D) provides that a "security is a covered security with respect to a transaction that is exempt from registration under this title pursuant to...commission rules or regulations issued under Section 4(2) [of the 33 Act], except that this subparagraph does not prohibit a State from imposing notice filing requirements that are substantially similar to those required by rule or regulation under Section 4(2) that [were] in effect on September 1, 1996."

Action or Interpretation:

States have been preempted from regulating transactions which are exempt from registration pursuant to Section 4(2) of the 33 Act. Rule 506 of Federal Regulation D was adopted as a safe harbor under Section 4(2). Michigan currently recognizes Rule 506 offerings under Rule 803.7 (Uniform Limited Offering Exemption) and Section 402(b)(21) of the Michigan Uniform Securities Act, 1964 PA 265, as amended (the "Michigan Act").

Section 18(c)(2) of NSMIA permits States to continue to require the filing of "any document" filed with the SEC, together with annual or periodic reports of the value of securities sold or offered to be sold to persons located in the State (if such sales data is not included in documents filed with the SEC), solely for notice purposes and the assessment of any fee, together with a consent to service of process and any required fee. In this regard, for Rule 506 offerings, the Bureau will continue to require the filing of a manually signed Form D and a consent to service of process and the payment of the \$100 filing fee within 15 days after the first sale in Michigan. The State undertaking required by Rule 803.7(c)(ii) will continue to be required.

The "bad boy" provisions under Rule 803.7(7)(b) and the suitability standards under Rule 803.7(7)(d) no longer apply to Rule 506 offerings. The Bureau will propose amendments to Rule 803.7 in the near future to bring it in line with NSMIA.

It should be noted that Section 18(c)(2)(C) of NSMIA provides that a State may require the registration of securities issued by any issuer who refuses to pay the fee required by Section 402(b)(21) of the Michigan Act. However, a delay in payment of such fees or the underpayment of such fees that is promptly remedied, does not constitute a "refusal" to pay.

Issuers are reminded that offerings made in Michigan pursuant to Rule 505 of Regulation D are not affected by NSMIA. Also, Rule 504 offerings are still not eligible under Rule 803.7.

Authority: National Securities Markets Improvement Act of 1996.

Signed by Craig B. Newell, Acting Director
Corporation, Securities and Land Development Bureau

Dated: April 22, 1997